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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,722	05/23/2001	Valdemar Zawadzki	010315-151	1183

7590 03/27/2003
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EXAMINER

SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/862,722

Applicant(s)

ZAWADZKI ET AL.

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- ☐ Interview Summary (PTO-413) Paper No(s) ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 15-24 in Paper No. 4 is acknowledged. The traversal is on the ground(s) that "a thorough search of the subject matter of claims 15-24 would be essentially coextensive with thorough search of the subject matter claims 1-14. Accordingly, there would be little additional burden on the Office to examine the claims together." This is not found persuasive because the Examiner has shown in the restriction requirement separate classification which would require a different field of search which would further result in a serious burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-14 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations “in a chosen configuration” in claim 17 and “as a chosen pattern” in claim 19 are deemed vague and indefinite. Clarification is requested.

The term “grammage” in claim 18 renders the claim vague and indefinite. Clarification is requested.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 15-24** are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (4,591,523).

Regarding **claim 15**, Thompson discloses a fluid-pervious fabric for imparting a pattern to a fibre web, the fabric comprising at least one polymer material with a softening temperature (see col. 7, line 19), a first surface (Fig. 2, #15), a second surface (Fig. 2, #16) opposite the first surface, and a fabric structure comprising a plurality of channels (Fig. 2, #26) providing fluid permeability between the first and the second surface, wherein the fluid-pervious fabric exhibits a permanent deformation of the fabric structure in the Z-direction in deformation zones (Fig. 2, #21) in which the fluid permeability is inherently essentially equal to the fluid permeability in the fabric zones outside the deformation zones. Regarding **claim 16**, the polymer material exhibits portions which inherently have been softened and subsequently solidified in the

deformation zones. Regarding **claim 17**, the fluid-pervious fabric exhibits the deformation (Fig. 2, #21) in a chosen configuration across at least one of the surface.

Regarding **claim 18**, Thompson discloses a patterned fibre web comprising a plurality of fibres arranged in a fibre structure (Fig. 5, also see col. 9, lines 22-27) having a grammage and a porosity, wherein the fibre web exhibits a deformation of the fibre structure in the Z-direction deformation zones (Fig. 5, #821), wherein the grammage and the porosity within the deformation zones (Fig. 5, #821) are inherently essentially equal to the grammage and porosity outside the deformation zones (Fig. 5, #821). Regarding **claim 19**, note the deformation zones (Fig. 2, #21) are visible as a chosen pattern across both surfaces of the fibre web.

Regarding **claims 16 and 20-24**, process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946,

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966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitations “the polymer material exhibits portions which have been softened and subsequently solidified in the deformation zones” (claim 16), “wherein the fibre web has been wet-formed or foam-formed” (claim 20), “wherein the fibre web has been air-laid” (claim 21), “wherein the fibre web has been hydraulically apertured or entangled” (claim 22), “wherein the fibre web has been through-air dried (TAD)” (claim 23) and “wherein the patterns in the fibre web have been created by means of forming or patterning/ aperturing on, or drying or shaping in contact with at least one fluid-pervious fabric according to claim 15” (claim 24) are methods of production and therefore do not determine the patentability of the product itself.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents are cited for further teachings of fluid-pervious fabrics similar to that instantly disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297.

The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

CAS

Catherine Simone
Examiner
Art Unit 1772

March 20, 2003

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/20/03